

UNLAWFUL ADOPTION OF A CHILD STUDY PLAN

Study Mandate

- During the 2014 General Assembly session, Senator Jeffrey L. McWaters introduced Senate Bill 411. It provides that any parent, guardian, or other person responsible for the care of a child who transfers physical custody of a child with the intent to do so permanently without following established adoption procedures is guilty of a Class 6 felony. These procedures attempt to ensure, among other things, that the child will not be abused or neglected by his new adoptive parents. The legislation would create an exception for kinship care arrangements for the purposes of school enrollment or other established legal procedures for transferring custody.
- Members of the Senate Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in Senate Bill 411 and report findings and recommendations prior to the 2015 General Assembly session.

Identified Issues

- Currently, § 18.2-371.1(A) of the *Code of Virginia* creates a Class 4 felony for any parent, guardian, etc., either by willful act or omission, to cause or permit serious injury to a child. Under § 18.2-371.1(B), a parent, guardian, etc., showing reckless disregard for human life by a willful act or omission while caring for a child that is sufficiently gross, wanton, and culpable to is guilty of a Class 6 felony.
 - The section also creates an affirmative defense for parents who safely deliver a child to a hospital or rescue squad within the first 14 days of the child's life.
- Virginia law does not currently acknowledge the existence of anything resembling "re-homing," (also called rehoming) which is when a child is removed from one adoptive family and placed in another home. The new family can re-adopt him, take guardianship through the court, or take custody of the child via a power of attorney.¹
- The proposed legislation stemmed from a joint Reuters and NBC News investigation² in 2013 revealing an underground market of adoptive parents seeking new families for children they no longer wish to parent. Parents arranged custody transfers, bypassing the typical adoption process (including background checks and a home study), through websites like Yahoo and Facebook. These children are extremely vulnerable and are at great risk for human trafficking and abuse.³
- The Interstate Compact on the Placement of Children (ICPC) is statutory uniform law in all 50 states, the District of Columbia and the U.S. Virgin Islands. It is intended to ensure the protection of children placed across state lines for foster care and adoption. It strives to ensure responsibility and communication among all parties involved until lawful termination. Procedures for the interstate and intercountry placement of children are intended to ensure that the proposed placement is in

¹ Twohey, M. (2013). Americans use the Internet to abandon children adopted from overseas. <http://www.reuters.com/investigates/adoption/#article/part1> (April 2014).

² Twohey, M. (2013). Americans use the Internet to abandon children adopted from overseas. <http://www.reuters.com/investigates/adoption/#article/part1> (April 2014).

³ McWaters, J. (2014). Report from Richmond: Week Three. <http://www.jeffmcwaters.com/news.php?q=122>. (April 2014).

compliance with state laws and regulations and is not contrary to the interests of the child.⁴

- While the ICPC is in place to help protect children, reports show that not all law enforcement officials are aware that it exists.⁵
- Illinois lawmakers have held a hearing about re-homing. Additionally, the U.S. Representative from Illinois,^{6,7} and state leadership in Colorado⁸ and Florida⁹ drafted bills aimed at preventing it. The Wisconsin legislature passed legislation, adding a penalty of up to nine months in jail or up to \$10,000 in fines for anyone not licensed by the state to advertise a child over age one for adoption or any other custody transfer. Governor Scott Walker signed it into law on April 16, 2014.¹⁰

Study Activities

- Interview impacted stakeholders
 - Virginia Department of Social Services
 - Local Departments of Social Services
 - Virginia Supreme Court/Office of the Executive Secretary
 - Virginia League of Social Service Executives
 - Department of Criminal Justice Services
 - Human Trafficking Steering Committee
 - Law enforcement
 - Office of the Attorney General
 - Advocacy Organizations
 - Parent Representatives
 - Private Child Placing Agencies
 - CASA Representatives
 - Guardians Ad Litem
 - Association of Administrators of the Interstate Compact of the Placement of Children (AAICPC)
 - Local Family Assessment and Planning Teams (FAPT)
 - Commonwealth's Attorneys
- Conduct extensive background and literature reviews
 - Other states' initiatives and policies
 - Best-practices protecting adopted children and re-homing prevention
- Review federal legislation/statutes
 - Interstate Compact on the Placement of Children (ICPC)
 - Child Abuse Prevention, Adoption, and Family Services Act
 - Adoption Assistance and Child Welfare Act

⁴ Virginia Department of Social Services. (2013). Interstate/Intercountry Placement of Children (ICPC). <http://www.dss.virginia.gov/family/icpc/index.cgi>. (April 2014).

⁵ Twohey, M. (2014). Girl spent months harboring secret, fearing she would be sent away again. <http://www.reuters.com/investigates/adoption-follows/#article/part2>. (April 2014).

⁶ Langevin, J. (2014). 113th Congress (2013 - 2014), H.R.3423. To ensure the safety and well-being of adopted children. <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:h.r.3423>: (April 2014).

⁷ Langevin, J. (2013). Rehoming Letter to WAM. <https://s3.amazonaws.com/s3.documentcloud.org/documents/812773/2013-10-29-re-homing-letter-to-wam.pdf>. (April 2014).

⁸ Conti, K. (2014). Concerning Making Acts Related to The Advertisement of Children for the Purposes of Transferring their Care to Others Trafficking in Children. [http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont2/8A17B9A7A273775687257C360075ED69/\\$FILE/1149_01.pdf](http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont2/8A17B9A7A273775687257C360075ED69/$FILE/1149_01.pdf). (April 2014).

⁹ Children, Families, and Elder Affairs Committee (2014). SB 498: Adoptions. <http://www.flsenate.gov/Session/Bill/2014/0498>. (April 2014).

¹⁰ Twohey, M. (2014). Wisconsin passes law to curb private custody transfers of children. <http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416>. (April 2014).

- Adoption and Safe Families Act
- Child Abuse, Domestic Violence, Adoption, and Family Services Act
- Fostering Connections to Success and Increasing Adoptions Act
- Safe and Timely Interstate Placement of Foster Children Act
- Adoption Promotion Act
- Intercountry Adoption Act
- Review Virginia laws, regulations, and policies
 - Adoption statutes and regulations
 - Child welfare regulations
 - Other related practices
- Analyze Virginia practices
 - Review state and local departments of social services policies and practices
 - Review Virginia's adoption policies
- Analyze other states' practices and procedures
 - National Conference of State Legislatures (NCSL)
 - State Policy Database from Casey Family Programs
 - Child Welfare League of America literature
- Develop findings and recommendations
 - Synthesize findings of literature review and interviews
 - Develop recommendations
- Solicit feedback on draft recommendations from impacted stakeholders
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report